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Associate General Counsel

November 17, 2004

UPS Next Day Air

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N W
Washington, DC 20423-0001
(202) 565-1674



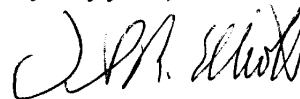
Re: Finance Docket No. 34536
Indiana & Ohio Central Railroad, Inc. - Acquisition and
Operation Exemption - CSX Transportation, Inc.

Dear Mr. Williams:

Pursuant to my conversation with a member of your staff, please find enclosed the original and 10 copies of United Transportation Union's Motion to Compel, with attachment, which was inadvertently omitted.

Thank you for your cooperation.

Very truly yours,

A handwritten signature in cursive script, likely belonging to Daniel R. Elliott, III.

Daniel R. Elliott, III
Associate General Counsel

Enclosures

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Public Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34536

INDIANA & OHIO CENTRAL RAILROAD, INC
- ACQUISITION AND OPERATION EXEMPTION -
CSX TRANSPORTATION, INC.

UNITED TRANSPORTATION UNION'S
MOTION TO COMPEL



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Office of Proceedings
NOV 18 2004
Part of
Public Record

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
Tel: (216) 228-9400
Fax: (216) 228-0937

United Transportation Union ("UTU") respectfully moves the Board pursuant to 49 C.F.R. § 1114.31 to compel Indiana & Ohio Central Railroad Inc. ("IORC") to produce various materials requested by UTU on September 23, 2004. To this date, IOCR has failed to respond to the request.

On September 1, 2004, IOCR filed its Notice of Exemption under 49 C.F.R. § 1150.41. UTU filed a Petition to Revoke on September 15, 2004. On September 24, 2004, UTU filed an amended Petition to Revoke based on new information it received from various employees on CSX Transportation, Inc. ("CSXT"), along with a document request to IOCR pursuant to 49 C.F.R. §§ 1121 and 1114 (attached hereto). On October 1, 2004, IOCR responded to UTU's Petition and noted in the section entitled Preliminary Matter that it is refusing to comply with the simple discovery request made by UTU because it claims UTU had waived its right to take any discovery whatsoever in this proceeding.

This result regarding the waiver of discovery suggested by IOCR in its Reply would clearly be contrary to the Board's regulations which allow a Petition to Revoke an Exemption to be filed at any time. *See* 49 C.F.R. § 1121.4(f). This regulation does not prohibit the same party from filing a second Petition to Revoke in the same proceeding. Since this second filing is not prohibited, it therefore follows that a request for discovery can be made in the second filing in accordance with Section 1121.2. This result would support the policy behind the Board's allowance of petitioners to revoke to file at any time because new information hidden by a petitioner for an exemption may surface at a later date, since if anything inappropriate was transpiring, this petitioner would certainly not be drawing anyone's attention to the matter.

While UTU is certainly not accusing the IOCR of doing anything improper here, UTU has a difficult time understanding why the carrier is being so secretive and uncooperative in this proceeding where UTU's request is only for items mentioned in the Petition for the Exemption.

Based on the foregoing discussion, this motion to compel should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. R. Elliott, III", written over a horizontal line.

Daniel R. Elliott, III
Associate General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, Ohio 44107
Tel: (216) 228-9400
Fax: (216) 228-0937

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing United Transportation Union's Motion to Compel has been served this 4th day of November, 2004 via first-class, postage pre-paid mail upon the following:

Gary A. Laakso, Esquire
Vice President Regulatory Counsel
Indiana & Ohio Central Railroad, Inc.
5300 Broken Sound Blvd., N.W., 2nd Floor
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esquire
Ball Janik, LLP
1455 F Street, N.W., Ste. 225
Washington, DC 20005
(202) 638-3307

Gordon MacDougall, Esquire
1025 Connecticut Ave., N.W.
Washington, DC 20036


Daniel R. Elliott, III

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**united
transportation
union**



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• DANIEL R. ELLIOTT, III
Associate General Counsel

September 23, 2004

Louis E. Gitomer
Ball Janik, LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005

Re: Finance Docket No. 34536

Dear Mr. Gitomer:

This is to request production of various materials some of which are set forth in the Notice of Exemption in this proceeding, filed September 1, 2004, as follows:

1. All leases and other written arrangements between Indiana & Ohio Central Railroad, Inc. ("IOCR") and CSX Transportation, Inc. ("CSXT") including leases, loans and other arrangements between CSXT that bear upon the IOCR purchases, leases and operations. *See*: Notice of Exemption, at pp. 4-5.

This request is made pursuant to 49 C.F.R. § 1121 in accordance with the amended petition to revoke, along with 49 C.F.R. § 1114.

Sincerely,

Daniel R. Elliott, III
Associate General Counsel

cc: C. J. Miller, III, General Counsel